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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE – CHAIRMAN
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

Arizona Corporation Commission

DOCKETED

SEP 12 2012

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W-02350A-13-0312

AZ CORP COMMISSION
DOCKET CONTROL

2013 SEP 12 P 4:20

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IN THE MATTER OF THE
APPLICATION OF TUSAYAN WATER
DEVELOPMENT ASSOCIATION, INC.
FOR CANCELLATION OF
CERTIFICATE OF CONVENIENCE
AND NECESSITY

**TUSAYAN WATER DEVELOPMENT
ASSOCIATION, INC.'S
APPLICATION FOR
CANCELLATION OF CERTIFICATE
OF CONVENIENCE AND
NECESSITY**

Applicant Tusayan Water Development Association, Inc. ("TWDA"), hereby applies for cancellation of its Certificate of Convenience and Necessity ("CC&N"). For its application, TWDA states as follows:

1. TWDA is a non-profit Arizona corporation which conducts business in Tusayan, Arizona. TWDA's address is as follows:

Tusayan Water Development Association, Inc.
P.O. Box 520
Grand Canyon, Arizona 86023

-and-

Tusayan Water Development Association, Inc.
Canyon Plaza
Highway 64
Grand Canyon, Arizona 85023

TWDA may be served for further proceedings in the above docket at the address of its counsel as follows:

Ryan J. Lorenz
Clark Hill PLC
14850 N Scottsdale Road, Suite 500
Scottsdale, AZ 85254
Phone: (480) 684-1100
Facsimile: (480) 684-1167
Email: rlorenz@clarkhill.com

2. On September 28, 1978, TWDA was incorporated by filing its Articles of Incorporation with the Arizona Corporation Commission ("ACC").

3. In the late 1970's, TWDA was necessary to be formed by local Tusayan business and community interests because water could not be obtained from ground water of the United States Department of the Interior – National Park Service unless an entity first acquired a CC&N from the ACC. However, simultaneously, the ACC would not issue a CC&N without an available water supply.

4. The specific purpose for which TWDA was incorporated was to secure a supply of water for the Tusayan, Arizona area, and to provide and maintain the necessary facilities to provide water to area residents in a safe and efficient manner.

5. On December 7, 1978, TWDA applied for a CC&N for provision of water service as a public service corporation within an area which is now generally located in the vicinity of the recently incorporated town of Tusayan, Arizona. The area over which TWDA sought a CC&N is legally described on Exhibit "A" attached and incorporated by reference as though fully set forth ("Certificated Area").

6. TWDA applied for the CC&N though it did not have a supply of water, because the National Park Service would not yield its condition that an authority have a CC&N to gain permission to pump groundwater belong to the National Park Service.

7. On February 8, 1979, the ACC issued its opinion and order in Docket Number U-2350, Decision No. 49808. The ACC found and determined that TWDA "is a fit and proper entity to receive a Certificate of Convenience and Necessity from this

1 Commission authorizing the provision of water service within the area described in the
2 APPENDIX hereto and that the issuance of a Certificate of Convenience and Necessity
3 authorizing such service would be consistent with the best interest of public.” A copy of
4 the Decision and Order dated March 28, 1979 is attached as Exhibit “B” (“Preliminary
5 Order”).
6

7 8. In reliance on the Preliminary Order, TWDA was able to get permission to
8 take water from the National Park Service.

9 9. On December 13, 1979, the ACC issued its Opinion and Order in the same
10 docket, Decision No. 50492, reaffirming the Preliminary Order and issuing a final CC&N
11 for the Certificated Area (“Final Order”). A copy of the Final Order is attached as Exhibit
12 “C.”

13 10. Since 1979, TWDA has filed annual reports with the ACC Corporations
14 Division and the ACC Utilities Division to maintain its status as a valid and existing non-
15 profit corporation and a valid holder of the CC&N.

16 11. On November 16, 2009, the ACC transmitted communication to TWDA
17 stating that TWDA should file an application for establishment of rates for water service.
18 For thirty years, TWDA had charged a rate to its customers which was barely high
19 enough to cover TWDA’s cost of purchasing water on a wholesale basis from Hydro-
20 Resources, Inc. (“Hydro”) and Anasazi Water Co., LLC (“Anasazi”), plus administrative
21 costs of computing customer consumption and billing and accounting functions.
22

23 12. Water is relatively more expensive in the Tusayan vicinity because of
24 unique geological and hydrological features which make acquisition and extraction of
25 groundwater correspondingly more expensive.

26 13. Customers whose water originated from Anasazi were charged \$55 per
27 thousand gallons. Customers whose water originated from Hydro were charged \$24.50
28

1 per thousand gallons. TWDA's administrative fee to cover its cost was normally set at
2 \$0.40 per thousand gallons.
3

4 14. In spite of relatively higher rates and different rates charged to different
5 customers, TWDA never received any direct complaints for those thirty years.

6 15. TWDA does not own or lease any water infrastructure. TWDA does not
7 own or lease any wells, pumps, pipelines, easements, service lines, or any other
8 equipment of any kind traditionally owned or leased by a vertically integrated water
9 service provider. Instead, the infrastructure for water service in the Tusayan area within
10 the certificated area is owned or controlled by Anasazi, Hydro, and Squire Motor Inns,
11 Incorporated ("Squire").

12 16. TWDA believes that it has franchises from all applicable government
13 agencies and subdivisions.

14 17. Squire owns a well, pump(s), storage tank(s), and supply lines.

15 18. Hydro purchases excess water and leases storage tank space from Squire.

16 19. Customers supplied by Hydro and Anasazi have their water meters read by
17 principals and employees of Hydro and Anasazi which then is reported to TWDA for
18 billing.
19

20 20. TWDA performs all billing functions, including compiling consumption
21 data, preparing invoices, mailing invoices, collecting payments, and charging/paying
22 applicable sales taxes and other fees.

23 21. TWDA does not perform any functions relating to regulatory compliance of
24 requirements of the Arizona Department of Environmental Quality. Anasazi and Hydro
25 conduct quality control functions for their own infrastructure.

26 22. Physical connection to the water distribution infrastructure is done by
27 Hydro and Anasazi in cooperation with customers.
28

1 23. TWDA does not handle any repairs or maintenance of the infrastructure.

2 24. TWDA, from time to time, adds new customers and closes the accounts of
3 old customers as water service is commenced or terminated within the certificated area.

4 25. TWDA, Hydro and Anasazi, together with Squire, work cooperatively in an
5 effort to provide water to customers in the Tusayan area.

6 26. On April 29, 2010, in response to the correspondence from the ACC dated
7 November 16, 2009, TWDA filed an Application for Establishment of Rates for Water
8 Service, Docket No. W-02350A-10-0163 ("TWDA Rate Docket").

9 27. During proceedings in the TWDA Rate Docket, the ACC determined that
10 the involvement of Hydro in the provision of water service in the Certificated Area
11 warranted a determination of whether Hydro was a public service corporation, subject to
12 regulation of the ACC.

13 28. Likewise, the ACC determined that the involvement of Anasazi in the
14 provision of water service in the Certificated Area warranted a determination of whether
15 Anasazi was subject to regulation of the ACC as a public service corporation.

16 29. On October 21, 2010, Anasazi filed an Application for a determination that
17 Anasazi was not a public service corporation, Docket No. W-20765A-10-0432 ("Anasazi
18 PSC Docket").

19 30. On November 19, 2010, Hydro filed an Application for a determination that
20 Hydro was not a public service corporation, Docket No. W-20770A-10-0473 ("Hydro
21 PSC Docket").

22 31. The ACC consolidated the TWDA Rate Docket, Anasazi PSC Docket and
23 the Hydro PSC Docket into a single proceeding ("Tusayan Consolidated Docket").
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1 32. In the Tusayan Consolidated Docket, the ACC granted petitions to
2 intervene filed by the newly incorporated Town of Tusayan ("Town"); a local Tusayan
3 developer, Tusayan Ventures LLC ("T-Ventures"); and Squire.

4
5 33. After filing of direct testimony, and collection of data requests, the ACC
6 Utilities Division Staff ("Staff") made a recommendation that TWDA be determined not
7 to occupy the status of a public service corporation. Staff recommended that Hydro and
8 Anasazi be determined to be public service corporations and that Hydro and Squire be
9 required to obtain their own CC&Ns and participate in rate determinations.

10 34. On August 12, 2013, TWDA, Anasazi, Hydro, the Town, and Staff
11 executed a settlement agreement designed and intended to result in a consolidation of the
12 water delivery system infrastructure into a single system, owned, managed and controlled
13 by Hydro. A copy of the Settlement Agreement is attached as Exhibit "D."

14 35. The Settlement Agreement further calls for Hydro to apply for and obtain a
15 CC&N over the Certificated Area. The Settlement Agreement also called for the
16 cancellation of TWDA's CC&N for which it makes the instant application.

17 36. The parties to the Settlement Agreement contemplate that Hydro will own
18 or control all of the necessary component parts of a water distribution system to all
19 customers of TWDA. The parties to the Settlement Agreement and Transfer Agreement
20 also contemplated that this consolidation would result in a clear determination of Hydro
21 as a public service corporation, subject to regulation and setting of just and reasonable
22 rates.
23

24 37. Hydro's legal name and other contact information is as follows:

25 Hydro Resources, Inc.
26 P.O. Box 3246
27 Grand Canyon, AZ 86023

28 Hydro Resources, Inc.

1 549 Camper Village
2 Grand Canyon, AZ 86023

3 Hydro Resources, Inc.
4 c/o Steve Hirsch
5 BRYAN CAVE LLP
6 Two North Central Avenue, Suite 2200
7 Phoenix, AZ 85004-4406
8 Phone: 602.364.7319
9 Fax: 602.716.8319
10 Email: sahirsch@bryancave.com

11 38. The proposed transaction evidenced by the Settlement Agreement and
12 Transfer Agreement will have no effect on the continuity of service provided to TWDA's
13 customers. Since physical service delivery is already accomplished by Hydro, the
14 administrative functions will simply be transferred to Hydro and can be done seamlessly
15 as provided in the agreements.

16 39. The acquisition and transfer of TWDA's assets will consist solely of its
17 customer information, accounts receivable and any remaining balance of funds in the
18 form of cash when TWDA is dissolved, its corporate affairs wound up and its corporate
19 existence terminated.

20 40. TWDA has been and remains solvent to permit it to conclude its service as
21 holder of the CC&N. A copy of TWDA's 2012 profit and loss and balance sheet are
22 attached as Exhibit "E."

23 41. The transaction will not require any financial commitment of TWDA.

24 42. There may be minimal administrative costs to Hydro in assuming
25 responsibility for the services that TWDA currently provides.

26 43. TWDA does not believe that the transaction evidenced by the Settlement
27 Agreement and Transfer Agreement will have any effect on any other utility.

28 44. The number of customers affected by the transaction evidenced by the
Settlement Agreement is ninety-four (94).

1 45. The effect of the proposed transaction should be minimal, and perhaps not
2 even noticeable. Because Hydro has agreed to continue charging the same rates that
3 TWDA presently charges, the customers will experience no immediate impact.
4

5 46. A new rate will be established after a one year temporary rate period for
6 Hydro.

7 47. The new rate will be subject to the scrutiny of the ACC at that time. For
8 purposes of this Application, TWDA takes no position on nor does TWDA forecast what
9 the future rate might be and whether such rate would have an impact on customers.

10 48. Simultaneously with the filing of this application, Hydro is expected to file
11 an application for issuance of a CC&N. This application and Hydro's application should
12 be consolidated into the existing Tusayan Consolidated Docket, so that all five dockets
13 may be considered and dealt with simultaneously.

14 WHEREFORE, TWDA respectfully requests the following relief on the foregoing
15 Application:

16 A. For an order consolidating this application, Hydro's application for
17 issuance of a CC&N with the presently pending Tusayan Consolidated Docket.

18 B. For an opinion and order adopting the foregoing facts in a set of findings
19 and facts and conclusions of law in support of a determination that TWDA's CC&N
20 should be cancelled.
21

22 C. For an opinion and order cancelling TWDA's CC&N, to be a date certain
23 and a time certain which time shall coincide with the commencement date of authority to
24 act and issuance of a new CC&N to Hydro under its separate application for issuance of a
25 CC&N.
26
27
28

1 D. For a final opinion and order which permits TWDA to dissolve, wind up its
2 corporate affairs, and terminate its corporate existence, and authorizing the transfer of
3 any remaining assets at the close of its business to Hydro.
4

5 **RESPECTFULLY SUBMITTED** this 12 day of September 2013.

6 **CLARK HILL PLC**

7
8 By: 

9 Ryan J. Lorenz

10 Attorneys for Applicant Tusayan
11 Water Development Association,
12 Inc.

13 **ORIGINAL** and thirteen copies of the
14 foregoing filed this 12 day of September 2013

15 Docket Control Division
16 Arizona Corporation Commission
17 1200 W. Washington
18 Phoenix, AZ 85007
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28



EXHIBIT “A”

EXHIBIT "A"

That portion of Coconino County, Arizona, described as follows, to-wit:

Being within Section 23 and 24, T 30 N, R 2 E, G & S R B & M, Coconino County, Arizona, the coterminous exterior boundaries of the entire composite and consolidated territory lying within the following boundaries: Beginning at a point on the north line of said Section 24, said point of beginning being Corner No. 5 of Homestead Entry Survey No. 401 (hereinafter HES 401); thence ⁽¹⁾S 14° W, 1574.76 feet to Corner No. 6, HES 401; thence ⁽²⁾S 27°30' W, 1769.46 feet; thence ⁽³⁾N 68°43' W, 656.70 feet to an easterly line of said HES 401; thence along said easterly line ⁽⁴⁾S 47°20' W., 593.73 feet to Corner 6-C, HES 401; thence southerly along the easterly boundary of Grand Canyon National Park Airport property 3061.29 feet to a corner of said airport property; thence ⁽⁵⁾S 40°40'07" W, 800 feet to a corner of said airport property; thence ⁽⁶⁾S 40°40'07" W, 11,515.33 feet to the most southerly corner of said airport property; thence ⁽⁷⁾N 49°19'53" W, 2,400 feet to the most westerly corner of said airport property; thence ⁽⁸⁾N 40°40'07" E, 15,993.57 feet to the most northerly corner of said airport property; thence ⁽⁹⁾N 49°47' W 471.21 feet to Corner 9, HES 401; thence ⁽¹⁰⁾N 48°20' W, 1198.56 feet to Corner 10, HES 401; thence ⁽¹¹⁾N 48°20' W 1119.36 feet to Corner 11, HES 401; thence ⁽¹²⁾N 330 feet to Corner 12, HES 401; thence ⁽¹³⁾S 58°50' E, 972.84 feet to Corner 1, HES 401; thence ⁽¹⁴⁾S 58°50' E, 1506.12 feet to Corner 2, HES 401; thence ⁽¹⁵⁾North 74°18' E, 1077.12 feet to Corner 3, HES 401; thence ⁽¹⁶⁾N 52°02' E, 2092.86 feet to Corner 4, HES 401; a point on said north line of Section 24; thence along said north section line ⁽¹⁷⁾N 89°32' E, 458.70 feet to the point of beginning;

Together with MOQUI CAMP, lying within the Northeast Quarter of Section 13, and westerly of State Highway 64, and that portion of Grand Canyon National Park Airport lying within Sections 25 and 26, all in Township 30 North, Range 2 East, G & S R B & M, Coconino County, Arizona.

APPENDIX

EXHIBIT “B”

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

1 BUD TIMS
Chairman
2 JIM WEEKS
Commissioner
3 STAN AKERS
Commissioner



4 IN THE MATTER OF THE APPLICATION OF)
5 TUSAYAN WATER DEVELOPMENT ASSOCIATION,)
INC., AN ARIZONA NON-PROFIT PUBLIC)
6 SERVICE CORPORATION, FOR AN ORDER PRE-)
LIMINARY TO THE ISSUANCE OF A CERTIFICATE)
7 OF CONVENIENCE AND NECESSITY TO PRO-)
VIDE A DOMESTIC WATER SUPPLY TO THE)
8 RESIDENTS OF TUSAYAN, ARIZONA.)

DOCKET NO. U-2350

DECISION NO. 49808

OPINION AND ORDER

9
10 DATE OF HEARING: February 8, 1979
11 PLACE OF HEARING: Phoenix, Arizona
12 HEARING OFFICER: Andrew W. Bettwy
13 APPEARANCES: Mangum, Wall, Stoops & Warden, by Karl H. Mangum,
14 Attorneys for the Applicant
Barney Paulsen, Deputy Director, Utilities Division, for
the Arizona Corporation Commission

15 By an application dated December 7, 1978, Tusayan Water Development Association, Inc.
16 has applied for a certificate of convenience and necessity authorizing the provision of water
17 service as a public service corporation within the area described in the APPENDIX hereto.
18 As reflected in the application and by the testimony presented during the February 8, 1979
19 hearing, compliance with certain initial requirements of this Commission is dependent on the
20 outcome of negotiations with the Grand Canyon National Park for the purchase by contract
21 of certain waters.

22 On the basis of the record submitted in connection with the above-captioned matter, it
23 is the determination of this Commission that Tusayan Water Development Association, Inc.
24 is a fit and proper entity to receive a certificate of convenience and necessity from this
25 Commission authorizing the provision of water service within the area described in the
26 APPENDIX hereto and that the issuance of a certificate of convenience and necessity authoriz-
27 ing such service would be consistent with the best interest of the public.

28 We note that Coconino County's franchise has been received, except with respect to the
29 area described in the last paragraph of the APPENDIX hereto, and that Tusayan Water
30 Development Association, Inc. is in the process of seeking an appropriate franchise for that
31 area.
32

1 ACCORDINGLY, IT IS ORDERED: Subject to the receipt of the appropriate franchise
2 from Coconino County pertaining to the area described in the last paragraph of the APPENDIX
3 hereto, Tusayan Water Development Association, Inc.'s application for a certificate of con-
4 venience and necessity authorizing the provision of water service within the area described
5 in APPENDIX hereto is hereby granted.

6 IT IS ORDERED FURTHER: This Decision shall constitute the certificate of convenience
7 and necessity contemplated herein.

8 IT IS ORDERED FURTHER: Prior to the commencement of the provision of water service
9 to its customers, Tusayan Water Development Association, Inc. shall comply with each and
10 every requirement of this Commission, including but not limited to the filing of a tariff and
11 the securing of appropriate Health Department approvals.

12 IT IS ORDERED FURTHER: Tusayan Water Development Association, Inc. shall at all
13 times do any and all things necessary to make appropriate disclosures to its customers, pre-
14 sent and future, regarding the rights of termination enjoyed by the Secretary of the Interior
15 which could jeopardize a continued supply of water to its customers.

16 IT IS ORDERED FURTHER: The Orders contained herein shall become effective
17 immediately.

18 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

19
20 
21 CHAIRMAN

22
23 
24 COMMISSIONER

25
26 
27 COMMISSIONER

28
29 IN WITNESS WHEREOF, I, G. C. ANDERSON, JR.
30 Executive Secretary of the Arizona Corporation
31 Commission, have hereunto set my hand and caused
32 the official seal of this Commission to be affixed at
the Capitol in the City of Phoenix, this 28th day
of March, 1979.

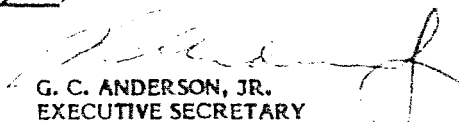

G. C. ANDERSON, JR.
EXECUTIVE SECRETARY

EXHIBIT "A"

That portion of Coconino County, Arizona, described as follows, to-wit:

Being within Section 23 and 24, T 30 N, R 2 E, G & S R B & M, Coconino County, Arizona, the coterminous exterior boundaries of the entire composite and consolidated territory lying within the following boundaries: Beginning at a point on the north line of said Section 24, said point of beginning being Corner No. 5 of Homestead Entry Survey No. 401 (hereinafter HES 401); thence S 14° W, 1574.76 feet to Corner No. 6, HES 401; thence S 27°30' W, 1769.46 feet; thence N 68°43' W, 656.70 feet to an easterly line of said HES 401; thence along said easterly line S 47°20' W., 593.73 feet to Corner 6-C, HES 401; thence southerly along the easterly boundary of Grand Canyon National Park Airport property 3061.29 feet to a corner of said airport property; thence S 40°40'07" W, 800 feet to a corner of said airport property; thence S 40°40'07" W, 11,515.33 feet to the most southerly corner of said airport property; thence N 49°19'53" W, 2,400 feet to the most westerly corner of said airport property; thence N 40°40'07" E, 15,993.57 feet to the most northerly corner of said airport property; thence N 49°47'W 471.21 feet to Corner 9, HES 401; thence N 48°20' W, 1198.56 feet to Corner 10, HES 401; thence N 48°20'W 1119.36 feet to Corner 11, HES 401; thence North, 330 feet to Corner 12, HES 401; thence S 58°50' E, 972.84 feet to Corner 1, HES 401; thence S 58°50' E, 1506.12 feet to Corner 2, HES 401; thence North 74°18' E, 1077.12 feet to Corner 3, HES 401; thence N 52°02' E, 2092.86 feet to Corner 4, HES 401; a point on said north line of Section 24; thence along said north section line, N 89°32' E, 458.70 feet to the point of beginning;

Together with MOQUI CAMP, lying within the Northeast Quarter of Section 13, and westerly of State Highway 64, and that portion of Grand Canyon National Park Airport lying within Sections 25 and 26, all in Township 30 North, Range 2 East, G & S R B & M, Coconino County, Arizona.

APPENDIX

EXHIBIT “C”

BEFORE THE ARIZONA CORPORATION COMMISSION

1 BUD TIMS
Chairman
2 JIM WEEKS
Commissioner
3 JOHN AHEARN
Commissioner
4

5 IN THE MATTER OF THE APPLICATION OF)
TUSAYAN WATER DEVELOPMENT ASSOCIA-)
TION, INC., AN ARIZONA NON-PROFIT)
6 PUBLIC SERVICE CORPORATION, FOR AN)
ORDER PRELIMINARY TO THE ISSUANCE)
7 OF A CERTIFICATE OF CONVENIENCE TO)
PROVIDE A DOMESTIC WATER SUPPLY TO)
8 THE RESIDENTS OF TUSAYAN, ARIZONA.)
9

DOCKET NO. U-2350

DECISION NO. 50492

OPINION AND ORDER

10 BY THE COMMISSION:

11 On March 28, 1979, this Commission issued Decision No. 49808 in the
12 above-numbered and entitled matter, which granted an order preliminary to the
13 issuance of a certificate of convenience and necessity to Tusayan Water Develop-
14 ment Association, Inc. pending the filing of the appropriate franchise from
15 Coconino County pertaining to the area described in the last paragraph of the
16 APPENDIX hereto, which is required for the issuance of the certificate of
17 convenience and necessity.

18 As of the date of this order, the above-mentioned document has been filed,
19 and the Commission is of the opinion that the certificate of convenience and
20 necessity should be issued.

21 WHEREFORE IT IS ORDERED that this order shall constitute and be a certi-
22 ficate of convenience and necessity, pursuant to Section 40-281, Arizona Revised
23 Statutes, authorizing applicant herein to construct, operate and maintain a public
24 domestic water utility to serve water in the area described in the APPENDIX hereto.

25 IT IS FURTHER ORDERED that the remainder of Decision No. 49808 shall
26 remain in full force and effect.

27 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

28 
29 CHAIRMAN


COMMISSIONER


COMMISSIONER

30 IN WITNESS WHEREOF, I, G. C. ANDERSON, JR., Executive Secretary of the
31 Arizona Corporation Commission, have hereunto set my hand and caused
32 the official seal of this Commission to be affixed at the Capitol in
the City of Phoenix, this 13th day of December, 1979.

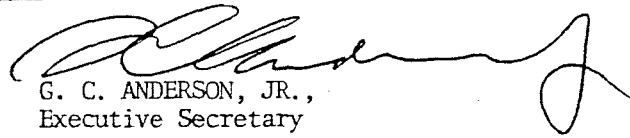

G. C. ANDERSON, JR.,
Executive Secretary

EXHIBIT “D”

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of the __ day of August 2013 by, between and among Tusayan Water Development Association, Inc. ("TWDA"), Anasazi Water Company LLC ("Anasazi"), Hydro-Resources, Inc., ("Hydro"), Arizona Corporation Commission Utilities Division ("Staff"), Town of Tusayan, Arizona ("Town"), and Squire Motor Inns, Inc. ("Squire"). TWDA, Anasazi and Hydro may be referred to collectively as "Applicants." The Town and Squire may be referred to collectively as "Settling Intervenors." Staff, Applicants and Settling Intervenors may be referred to individually as a "Party" or collectively as "Parties."

RECITALS

On April 29, 2010, TWDA, which holds the Certificate of Convenience and Necessity ("CC&N"),¹ filed with the Arizona Corporation Commission ("Commission" or "ACC"), in Docket No. W-02350A-10-0163 ("Tusayan Docket"), a rate application, which has been suspended by Procedural Order dated January 18, 2011; and

In response to a letter from Staff dated July 21, 2010, on October 21, 2010, Anasazi, which provides water on a wholesale basis to TWDA through Anasazi's water distribution system, filed an Application to be adjudicated "Not A Public Service Corporation" in Docket No. W-20765A-10-0432 ("Anasazi Docket"); and

In response to a letter from Staff dated July 21, 2010, on November 1, 2010, Hydro, which provides water on a wholesale basis to TWDA through Hydro's water distribution system, filed an Application for a Determination that it is not acting as a Public Service Corporation in Docket No. W-20770A-10-0437 ("Hydro Docket"); and

On January 18, 2011, a Procedural Order was issued consolidating the three dockets (i.e. the Tusayan Docket, the Anasazi Docket and the Hydro Docket) which dockets may be referred to collectively as the "ACC Adjudication";² and

Tusayan Ventures, LLC, the Town and Squire have all been granted leave to intervene in the ACC Adjudication, however, Tusayan Ventures LLC has decided not to participate in this Settlement; and

Anasazi, Hydro and TWDA, have agreed to the terms and conditions of Anasazi's conveyance to Hydro of certain physical plant and property, and other miscellaneous equipment, and for cancellation of TWDA's CC&N and Hydro's application

¹ On March 28, 1979, the Arizona Corporation Commission issued Decision No. 49808 in Docket U-2350 with a legal description of the certificated area for the CC&N. That Decision was later re-affirmed in Decision No. 50492, issued on December 13, 1979. A copy of the legal description of the certificated area is attached to this Agreement as Exhibit A ("Certificated Area").

² During the Procedural Conference of February 7, 2011, TWDA stated it had no objection to being adjudicated in this proceeding.

for a CC&N covering the same Certificated Area, pursuant to a separate agreement of even date herewith ("Transfer Agreement");

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **PURPOSE.** The purpose of this Agreement is to resolve contested matters in Docket Nos. W-02350A-10-0163, W-20765A-10-0432 and W-20770A-10-0437 in a manner consistent with the public interest. The Parties further recognize that: (a) this Agreement acts as a procedural device to propose the Parties' settlement terms to the Commission; and (b) this Agreement has no binding force or effect until finally approved by an Order of the Commission. Nothing contained in this Agreement is an admission by any Party that any of the positions taken, or that might be taken by each Party in the ACC Adjudication, is unreasonable or unlawful, and the terms and conditions of this Agreement are in compromise of disputed claims and constitute compromise settlement positions. In addition, acceptance of this Agreement by any of the Parties is without prejudice to any position taken by any Party in the ACC Adjudication.

2. **ANASAZI, HYDRO AND TWDA ACTIONS.** By a separate Transfer Agreement of even date herewith ("Transfer Agreement"), Anasazi, Hydro and TWDA have agreed, in pertinent part, that:

2.1 Anasazi will (a) transfer to Hydro certain physical plant and property, including water distribution lines and meters, and the easements and rights-of-way associated with those items that are within Anasazi's control; (b) assist Hydro in obtaining certain easements outside of Anasazi's control which are necessary for Hydro to serve those parcels previously served by Anasazi which are east of Route 64 ("Anasazi Serviced Parcels"); and (c) dissolve, wind up and terminate its existence.

2.2 Within thirty days of the execution of this Agreement, TWDA will apply for deletion/cancellation of its CC&N and Hydro will simultaneously file an application seeking a new CC&N covering the same area and providing for service to TWDA's existing customers in the Certificated Area except for the property owned by Red Feather Properties Limited Partnership, which property is commonly known as Coconino County Assessor parcel numbers 502-17-007L and 502-17-009B ("RFP Campus"), for which the property owners shall provide their own service and shall not receive service from Hydro.

2.3 Hydro will (a) acquire from Anasazi the physical plant and property, and property rights, described in section 2.1 above, (b) provide water service to the various properties currently served by TWDA in the Tusayan area except for the RFP Campus, and (c) transfer to Red Feather Properties Limited Partnership the water distribution lines and fire hydrants located on the Red Feather Properties Limited Partnership property, all in accordance with the terms of the Transfer Agreement.

2.4 The Parties shall immediately commence and diligently proceed to effect the conveyances summarized in sections 2.1 and 2.3 above, but in any event such conveyances shall occur no later than ten (10) days following the date at which the Commission's Decision and Order approving this Agreement and deleting TWDA's CC&N and providing for a new CC&N to Hydro as set forth in section 2.2 above becomes final and non-appealable ("Transfer Date"). Additionally, until the consummation of the conveyances or Commission action, whichever first occurs, Anasazi shall provide the Parties with monthly updates as to the status of the conveyances.

3. **SQUIRE AND HYDRO ACTIONS.** Prior to the Transfer Date, Squire and Hydro shall enter into a new contract or amend their existing water supply contract to ensure that Squire is a private, stand-alone point of service, selling water to Hydro under said contract.

4. **CONTINUED ACC ADJUDICATION PROCEEDINGS.**

4.1 The ACC Adjudication and all proceedings related thereto shall be continued until the Commission approves a new CC&N for Hydro and deletes/cancels the CC&N for TWDA.

4.2 In the event the Commission fails to approve this Agreement and issue an Order deleting TWDA's CC&N and providing for a new CC&N to Hydro as set forth in section 2.2 above, this Agreement shall be deemed terminated and the ACC Adjudication shall thereafter resume. In the event the Commission issues an Order deleting TWDA's CC&N and providing for a new CC&N to Hydro but fails to approve all terms of this Agreement without material change, this Agreement shall be deemed terminated and the ACC Adjudication shall thereafter resume and any CC&N granted shall be null and void after due process.

5. **SETTLEMENT.** The Parties shall proceed with the settlement of the ACC Adjudication as follows:

5.1 TWDA shall file a request to delete/cancel its CC&N and Hydro shall simultaneously file an application for a new Certificate of Convenience and Necessity ("New CC&N") covering the same area as the Certificated Area within the time frames set forth in section 2.2, above.

5.2 Upon filing their respective CC&N requests, the Parties shall also file a request that the dockets associated with the ACC Adjudication be closed and dismissed as moot upon the issuance of an Order by the Commission granting the New CC&N to Hydro and deleting or cancelling the CC&N of TWDA.

5.3 Each Party shall execute and deliver to the other Party and the Commission such documents and perform such acts as reasonably requested by any other Party or required to obtain the Order of the Commission that the ACC Adjudication be closed and dismissed.

5.4 Until the Commission has granted TWDA's request to cancel its CC&N and granted the New CC&N to Hydro, Hydro and Anasazi will continue to supply water to

TWDA and TWDA will continue to provide water service in the Certificated Area. Nothing herein shall preclude Hydro from supplying water to TWDA for TWDA's use in serving the Anasazi Serviced Parcels at Hydro rates upon Anasazi's transfer of the property described in section 2.1 above.

5.5 Until the Commission grants the New CC&N to Hydro, which Decision is anticipated to provide a Fair Value Rate Base and rates for the New CC&N area, TWDA shall continue to charge its current rates unless such rates are revised by agreement of the Parties and approved by the Commission. Upon Anasazi's transfer of the property described in section 2.1 above and Hydro thereafter supplying water to TWDA so that TWDA may serve the Anasazi Serviced Parcels, TWDA shall charge such customers the Hydro rates.

6. COMMISSION EVALUATION OF AGREEMENT.

6.1 **Staff Authority.** The Parties recognize that (a) the Staff does not have the power to bind the Commission; and (b) for the purposes of settlement, the Staff acts in the same manner as a Party in proceedings before the Commission.

6.2 **Commission Authority to Modify.** Each provision of this Agreement is in consideration and support of all other provisions, and expressly conditioned upon acceptance by the Commission without material change; provided, however, that the Parties further recognize that the Commission will evaluate the terms of this Agreement, and that after such evaluation the Commission may require immaterial modifications to any of the terms hereof before accepting this agreement.

6.3 **Commission Approval.** In the event that the Commission adopts an Order approving all of the terms of this Agreement without material change, such action by the Commission constitutes approval of the Agreement, and thereafter the Parties shall abide by its terms.

6.4 **Effect of Modification by the Commission.** In the event that any Party objects to any modification to the terms of this Agreement made by the Commission in an Order approving this Agreement, such Party shall timely file an Application for Rehearing under A.R.S. § 40-253. In the event that a Party does not file such an application, that Party shall be deemed (a) to have accepted any modifications made by the Commission; and (b) to have conclusively and irrefutably accepted that any modifications to terms of this Agreement were not material and therefore that the Commission Order adopted the terms of this Agreement without material change.

6.5 **Application for Rehearing.** If any Party to this Agreement files an Application for Rehearing and alleges that the Commission has failed to approve all terms of the Agreement without material change, then such application shall be deemed a withdrawal of the Agreement, and the Parties shall request a Procedural Order setting the Parties' Applications for Adjudication for hearing. Such hearing shall be without prejudice to the position of any Parties, and this Agreement and the Transfer Agreement, any of the terms and conditions of this Agreement or the Transfer Agreement, any communications leading up to

the execution of this Agreement or the Transfer Agreement, and any supporting documents relating thereto shall not be admitted into evidence for any purpose nor used by the Commission in its final consideration of the issues raised in this consolidated Docket. If a Party files an Application for Rehearing before the Commission, Staff shall not be obligated to file any document or take any position regarding the withdrawing Party's Application for Rehearing.

6.6 Appeal of Commission Decision. If a Party's application for rehearing alleges that the Commission has failed to approve all terms of this Agreement without material change, and the application for rehearing is denied, either by Commission Order or by operation of law, and such Party still objects to any modification to the terms of this Agreement made by the Commission, that Party shall timely file an appeal of the Commission's decision pursuant to A.R.S. § 40-254 or § 40-254.01, as appropriate. In the event that the Party does not file such an appeal, it shall be deemed (a) to have accepted any modifications made by the Commission, and (b) to have conclusively and irrefutably accepted that any modifications to the terms of this Agreement were not material and therefore that the Commission's Order adopted the terms of this Agreement without material change.

6.7 Limitations. The terms and provisions of this Agreement apply solely to and are binding only in the context of the provisions and results of this Agreement and neither this Agreement nor any of the positions taken in this Agreement by any of the Parties may be referred to, cited to, or relied upon by any other Party in any fashion as precedent or otherwise in any proceeding before the Commission or any other regulatory agency or before any court of law for any purpose except in furtherance of the purpose and results of this Agreement.

6.8 Definitive Text. The 'Definitive Text' of this Agreement shall be the text adopted by the Commission in an Order adopting substantially all the terms of this Agreement including all modifications made by the Commission in such an Order.

6.9 Severability. Each of the terms of the Definitive Text of this Agreement is in consideration and support of all other terms. Accordingly, such terms are not severable.

6.10 Support and Defend. The Parties shall make reasonable and good faith efforts necessary to obtain a Commission Order approving this Agreement. The Parties further pledge to support and defend this Agreement before the Commission. If this Agreement is approved, the Parties will support and defend this Agreement before any court or regulatory agency in which it may be at issue.

7. GENERAL.

7.1 This Agreement represents the Parties' mutual desire to compromise and settle disputed issues in a manner consistent with the public interest. The terms and provisions of this Agreement apply solely to and are binding only in the context of the purposes and results of this Agreement.

7.2 No Party is bound by any position asserted in negotiations, except as expressly stated in this Agreement. No Party shall offer evidence of conduct or statements made in the course of negotiating this Agreement before this Commission, any other regulatory agency, or any court.

7.3 To the extent any provision of this Agreement is inconsistent with any existing Commission order, rule, or regulation, this Agreement shall control. Nothing contained in this Agreement is intended to interfere with the Commission's authority to exercise any regulatory authority by the issuance of orders, rules or regulations.

7.4 This Agreement may be executed by facsimile or in any number of counterparts; all such counterparts shall be deemed to constitute one and the same instrument and each of the executed counterparts shall be deemed an original hereof. The individuals executing this Agreement represent and warrant that he or she has the full power and authority to execute this Agreement and to create binding obligations of the Parties in accordance with the terms hereof.

7.5 No change, modification, or waiver of any provision of this Agreement shall be valid or binding unless it is in writing, dated after the date hereof, and signed by the Parties intended to be bound and approved by the Commission.

7.6 To the extent permitted by the context in which used, words in the singular number shall include the plural and vice versa; words in the masculine gender shall include the feminine and neuter and vice versa; and references to "persons" or "Parties" in this Agreement shall be deemed to refer to natural persons, corporations, general partnerships, limited partnerships, trusts, and all other entities. All references to "days" shall mean calendar days unless stated otherwise. If the last day of any time period stated herein shall fall on a Saturday, Sunday, or legal holiday in the State of Arizona, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, or legal holiday in the State of Arizona.

7.7 Neither this Agreement nor any of the positions taken in this Agreement by any of the Parties may be referred to, cited, or relied upon as precedent in any proceeding before the Commission, any other regulatory agency, or any court for any purpose except in furtherance of securing the approval and enforcement of this Agreement.

7.8 This Agreement shall not be construed for or against any Party as a result of its participation or the participation of its counsel in the preparation and/or drafting of this Agreement or any exhibits hereto.

7.9 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective owners, shareholders, directors, members, principals, agents, heirs, assigns and successors-in-interest.

Anasazi Water Company LLC

By: _____

Its: Manager/Member

Arizona Corporation Commission

Utilities Division

By: _____

Its: Director

Hydro Resources Inc.

By: _____

Its: _____

Tusayan Water Development Association, Inc.

By: _____

Its: _____

Squire Motor Inns, Inc.

By: _____

Its: _____

Town of Tusayan

By: _____

Its: _____

Approved Town of Tusayan:

Its: General counsel

EXHIBIT "A"

That portion of Coconino County, Arizona, described as follows, to-wit:

Being within Section 23 and 24, T 30 N, R 2 E, G & S R B & M, Coconino County, Arizona, the coterminous exterior boundaries of the entire composite and consolidated territory lying within the following boundaries: Beginning at a point on the north line of said Section 24, said point of beginning being Corner No. 5 of Homestead Entry Survey No. 401 (hereinafter HES 401); thence S 14° W, 1574.76 feet to Corner No. 6, HES 401; thence S 27°30' W, 1769.46 feet; thence N 68°43' W, 656.70 feet to an easterly line of said HES 401; thence along said easterly line S 47°20' W., 593.73 feet to Corner 6-C, HES 401; thence southerly along the easterly boundary of Grand Canyon National Park Airport property 3061.29 feet to a corner of said airport property; thence S 40°40'07" W, 800 feet to a corner of said airport property; thence S 40°40'07" W, 11,515.33 feet to the most southerly corner of said airport property; thence N 49°19'53" W, 2,400 feet to the most westerly corner of said airport property; thence N 40°40'07" E, 15,993.57 feet to the most northerly corner of said airport property; thence N 49°47' W 471.21 feet to Corner 9, HES 401; thence N 48°20' W, 1198.56 feet to Corner 10, HES 401; thence N 48°20' W 1119.36 feet to Corner 11, HES 401; thence North, 330 feet to Corner 12, HES 401; thence S 58°50' E, 972.84 feet to Corner 1, HES 401; thence S 58°50' E, 1506.12 feet to Corner 2, HES 401; thence North 74°18' E, 1077.12 feet to Corner 3, HES 401; thence N 52°02' E, 2092.86 feet to Corner 4, HES 401; a point on said north line of Section 24; thence along said north section line, N 89°32' E, 458.70 feet to the point of beginning;

Together with MOQUI CAMP, lying within the Northeast Quarter of Section 13, and westerly of State Highway 64, and that portion of Grand Canyon National Park Airport lying within Sections 25 and 26, all in Township 30 North, Range 2 East, G & S R B & M, Coconino County, Arizona.

APPENDIX

Anasazi Water Company LLC

By: *[Signature]*

Its: Manager/Member

Arizona Corporation Commission

Utilities Division

By: _____

Its: Director

Hydro Resources Inc.

By: _____

Its: _____

Tusayan Water Development Association, Inc.

By: _____

Its: _____

Squire Motor Inns. Inc.

By: _____

Its: _____

Town of Tusayan

By: _____

Its: _____

Approved Town of Tusayan:

Its: General counsel

Anasazi Water Company LLC

By: _____

Its: Manager/Member

Arizona Corporation Commission

Utilities Division

By: _____

Its: Director

Hydro Resources Inc.

By: _____

Its: _____

Tusayan Water Development Association, Inc.

By: _____

Its: _____

Squire Motor Inns, Inc.

By: _____

Its: _____

Town of Tusayan

By: _____

Its: _____

Approved Town of Tusayan:

Its: General counsel

Anasazi Water Company LLC

By: _____

Its: Manager/Member

Arizona Corporation Commission

Utilities Division

By: _____

Its: Director

Hydro Resources Inc.

By: John W. Rusten

Its: President

Tusayan Water Development Association, Inc.

By: _____

Its: _____

Squire Motor Inns, Inc.

By: _____

Its: _____

Town of Tusayan

By: _____

Its: _____

Approved Town of Tusayan:

Its: General counsel

Anasazi Water Company LLC

By: _____

Its: Manager/Member

Arizona Corporation Commission

Utilities Division

By: _____

Its: Director

Hydro Resources Inc.

By: _____

Its: _____

Tusayan Water Development Association, Inc.

By: *Charles Luna*

Its: BOARD MEMBER

8-12-13

Squire Motor Inns, Inc.

By: _____

Its: _____

Town of Tusayan

By: _____

Its: _____

Approved Town of Tusayan:

Its: General counsel

Anasazi Water Company LLC

By: _____

Its: Manager/Member

Arizona Corporation Commission

Utilities Division

By: _____

Its: Director

Hydro Resources Inc.

By: _____

Its: _____

Tusayan Water Development Association, Inc.

By: _____

Its: _____

Squire Motor Inns, Inc.

By: _____

Its: *Vice President* _____

Town of Tusayan

By: _____

Its: _____

Approved Town of Tusayan:

Its: General counsel

Anasazi Water Company LLC

By: _____

Its: Manager/Member

Arizona Corporation Commission

Utilities Division

By: _____

Its: Director

Hydro Resources Inc.

By: _____

Its: _____

Tusayan Water Development Association, Inc.

By: _____

Its: _____

Squire Motor Inns, Inc.

By: _____

Its: _____

Town of Tusayan

By: Al M. [Signature]

Its: Vice Mayor

Approved Town of Tusayan:

[Signature]

Its: General Council

Town Attorney

EXHIBIT "E"

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09/09/13

Accrual Basis

Tusayan Water Development Assn.
Profit & Loss
January through December 2012

	Jan - Dec 12
Income	
ACCTNG CREDIT	683.33
TWDA FEE	49,392.50
WATER REVENUE	
ANASAZI	374,310.77
HYDRO	692,338.27
Total WATER REVENUE	<u>1,066,649.04</u>
Total Income	<u>1,116,724.87</u>
Gross Profit	1,116,724.87
Expense	
ACC REGULATORY	0.00
Charges	
Bank	3.18
Total Charges	<u>3.18</u>
Insurance	3,076.00
MISCELLANEOUS	324.40
Prof Fees	
Acctg	12,000.00
Legal	11,280.00
Total Prof Fees	<u>23,280.00</u>
Util	
Elect	-131.31
Water	
ANASAZI WATER	374,310.77
HYDRO WATER	692,338.19
Total Water	<u>1,066,648.96</u>
Total Util	<u>1,066,517.65</u>
Total Expense	<u>1,093,201.23</u>
Net Income	<u><u>23,523.64</u></u>

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09/09/13

Accrual Basis

Tusayan Water Development Assn.
Balance Sheet
As of December 31, 2012

	<u>Dec 31, 12</u>
ASSETS	
Current Assets	
Checking/Savings	
Chase Checking	26,870.56
Total Checking/Savings	26,870.56
Accounts Receivable	
Receivables	98,681.73
Total Accounts Receivable	98,681.73
Total Current Assets	125,552.29
TOTAL ASSETS	<u>125,552.29</u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Payables	88,832.18
Total Accounts Payable	88,832.18
Other Current Liabilities	
Sales Tax	13,209.10
Total Other Current Liabilities	13,209.10
Total Current Liabilities	102,041.28
Total Liabilities	102,041.28
Equity	
Earnings	-12.63
Net Income	23,523.64
Total Equity	23,511.01
TOTAL LIABILITIES & EQUITY	<u>125,552.29</u>